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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,524	04/12/2004	Ira Ekhaus	16128-002	4871
7590	05/13/2005		EXAMINER	
CHADBOURNE & PARKE LLP 30 Rockefeller Plaza New York, NY 10112			HWANG, VICTOR KENNY	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/823,524	
Examiner	Art Unit	
Victor K. Hwang		3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 12 April 2004.  
2a) This action is FINAL.                            2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-5,7-13 and 15-17 is/are rejected.  
7) Claim(s) 6 and 14 is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on 12 April 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because:

reference characters in Figs. 8-11 lack lead lines;

Figs. 11a, 11b and 11c should not have the further “Fig. 11” identifier;

cross-section AA#1 and AA#2 should be separately labeled such as Fig. 8a and Fig. 8b;

Figs. 1 and 2 are of the front pages of patents and include reference characters not identified in the specification and include multiple views, it is suggested that these drawings be deleted since they are not necessary to understanding the invention;

Figs. 3-7 are not clear and appear to be photographs, it is suggested that better quality black and white photographs be provided, line drawings be substituted, or the drawings be deleted.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the

filings date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "10" and "30". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

3. The disclosure is objected to because of the following informalities:  
numerous typographical errors exist, such as "sequel" on page 1, line 9; "specialize" on page 2, line 9; "w.r.t." on page 3, line 11 is not clear; "at" on page 7, line 6; "I" on page 8, line 8; "4" on page 9, line 7; and "5" on page 11, line 13.

Appropriate correction is required.

4. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

***Claim Objections***

5. Claims 1, 11 and 12 are objected to because of the following informalities:  
in claim 1, on line 4 of the claim, “the plate axis” presumably refers to an axis of the weight plates;  
after claim 11, “1” presumably forms a part of claim 12.  
Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 4, 5, 9, 10, 12, 13 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by *Lay* (US Pat. 5,735,779). *Lay* discloses a kettlebell exercise device 1 comprising a handle 7 with a grip section 73. A support bar 3 is aligned substantially parallel to an axis of the grip section 73 of the handle 7. One or more attachment members 5,2,33 are configured to provide an adjustable distance between the grip section 73 and the support bar 3. At least one weight stack 8 and an adjustable plurality of weight plates 8 are supported on the

support bar 3 with the weight plates 8 aligned on the support bar 3 with their plate axis aligned with an axis of the support bar 3. The attachment members 5,2,33 are flexibly configured to clamp tightly against a variety of weight stack widths (Fig. 5). The supporting bar 3 has a smooth overall profile lacking excessive protrusions. The support bar 3 comprises a bolts/washer combination 31 tightened on either side of an elongated nut 3,32.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4, 7-12 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Wood* (US Pat. 1,917,566) in view of *Takahashi* (JP 05137815 A). *Wood* discloses a kettlebell exercise device comprising a handle 5,10a with a grip section; one or more attachment members 10,9a; a support bar 1 aligned along a plate axis substantially parallel to an axis of the grip section; at least one weight stack 3,4 and an adjustable plurality of weight plates 3,4. The attachment members are flexibly configured to clamp tightly against a variety of weight stack widths. A segment of the attachment members 9a can flex within the grip section 10a. The supporting bar has a smooth overall profile lacking excessive protrusions. Roughly hemispherical end caps 6 or 2 further approximate a spheroidal shape of a solid kettlebell. A protective band 2 can surround the weight stack to accommodate different form

factors and provide additional padding. The handle 5,10a can be used to secure a user's foot (page 1, lines 85-90).

*Wood* does not disclose the attachment members configured to provide an adjustable distance between the grip section 5,10a and the plate axis.

Adjustability, where desirable, is a modification that is within the skill of the art. *In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA 1954). *Takahashi* discloses a foot strap for attachment to dumbbell. The footstrap is adjustable so as to accommodate various foot sizes.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to configure the attachment members to provide an adjustable distance between the grip section and the plate axis, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954). *Takahashi* shows the desirability of adjustability to accommodate various foot sizes.

#### *Allowable Subject Matter*

10. Claims 6 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Calvert* (US Pat. 1,316,683), *Smithberg* (US Pat. Pub. 2003/0162637 A1) and *Berdachev* (SU 1,409,295) disclose roughly hemispherical caps and/or weight plates that can be used with a support bar to provide a spheroidal shape of a solid kettlebell.

*Schwartz* (US Pat. 4,351,526), *Patterson* (US Pat. 6,569,066 B1) and *Boiko et al.* (RU 2001650 C1) disclose handles and adjustable attachment members.

*Cisneros* (US Pat. 4,431,185) discloses a kettlebell device comprising a padded case.

*Blanchard* (US Pat. 4,659,079) discloses an exercise device comprising a protective band.

*Smith* (US Pat. 6,387,022 B1) discloses a kettlebell device comprising a handle and attachment members wherein a segment of the attachment members can flex within the grip section of the handle.

*Chit Tun* (advertisement in "Barbell Exercises" by Chit Tun, pages 23-27, 1927) discloses a kettlebell on page 25.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence at this time is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
April 27, 2005

JEROME W. DONNELLY  
PRIMARY EXAMINER

